MICHIGAN

LAW REVIEW

VOL. VII DECEMBER, 1908 NO. 2

SOME HISTORICAL MATTER CONCERNING LITERARY PROPERTY

THE notion of property in published literary works was of gradual development. One may search in vain through classical literature and Roman law to find anything in the nature of copyright.[1] Hearty condemnation of plagiarism is to be found. Stealing another man's labor and passing it off as one's own[2] was a literary crime, but neither that nor open piracy seems to have been a matter of which the law took cognizance.

Before the invention of printing, making manuscript copies of a book was such a laborious and time-consuming task that an ancient author must have felt sufficiently repaid if anyone cared enough for his work to undertake the endless task of copying it by hand, and was undoubtedly glad to have the larger audience that it gave him. In fact, the mere possession of a manuscript was regarded as including the right to make copies indefinitely.

Authors were in the habit of publicly reading their productions for profit and of depending on this and on the bounty of rich patrons for their living and not on the proceeds of the sale of copies of their literary works. Publishing in its modern sense was unknown until long after the invention of printing.

Ancient writers wrote for posterity, with little thought for the present. But posterity's applause would not fill an empty stom-

[1] Transactions of American Philological Association, Vol. XXXVI, 1906, IX. "The Title of Caesar's Works on the Gallic and Civil Wars," by Francis W. Kelsey, p. 216.

[2] Aristotle copied page after page from Democritus and gave little credit. Cicero tells us that Epicurus borrowed bodily all his physical theories, his philosophy as well, spoiled what he borrowed and gave no credit at all. Snyder, "The World Machine" (Longmans), p. 134.

ach, and posthumous fame did not satisfy present hunger. It is perhaps pardonable in the writer of antiquity that he did not evince much enthusiasm over things which were to happen after he was dead. It was much like the consoling situation pictured in the Mikado; "Cheer up," said the Lord High Executioner to the condemned criminal, "after your execution there will be a great celebration, there'll be fireworks in the evening. You won't see them, but they'll be there just the same." It must have occurred to some mortal writer of immortal works, cheered by the thought that after he was dead his name would be on every tongue, that future fame might well be supplemented by a little present remuneration. From the standpoint of poor, hungry human nature to write works which will live after one is gone is not so satisfying as to write those which will enable that one to live while he is here.

There were undoubtedly disputations over the nature of a writer's property in his work, but the matter was purely academic until the invention of printing, which enabled the easy reproduction of many copies, for here arose the question of wholesale publication and transformed the matter from a theory to a condition. The making of manuscript copies involved such an amount of manual labor that their distribution broadcast was an impossibility, but with the introduction of the printing press, by means of which copies could be multiplied rapidly and cheaply, literary men found themselves confronted with a situation in which they lost the actual physical control of the vehicle of their work, which in the old days they had always maintained by the possession of the manuscript. Now, however, the power to make copies was in the hands of any possessor of one of the printed books.

The easy dissemination of knowledge by means of printing alarmed the ecclesiastics, who regarded all learning their province, and their powerful influence was exerted to restrict, as much as possible, the printing of books. On the other hand, the government of Venice took steps to encourage the new art and those connected with it, and from a very early day granted letters patent to certain printers conferring the exclusive right to print certain books or classes of books. These letters patent were monopolies, pure and simple. The earliest (1469) was the exclusive privilege given to John of Speyer to print books in Venice for a period of five years. The purpose of these privileges could not have been to encourage authorship. They were almost invariably given to printers and were apparently for the purpose of encouraging printing by eliminating competition, and thus making it more profitable. The printed literature of the day consisted largely of

the classics and the works of the fathers of the Church. In but few instances were there grants to an author of the exclusive right to print his own books. Indeed, in the vast amount of Venetian legislation concerning books and printing, there is nowhere a definite recognition of the property of an author in his work.[3]

In Germany and France during the centuries following the invention of printing, printers and publishers concerned themselves entirely with the printing of the manuscripts of the earlier periods. The literary work required was that of compilation and collation; it was editorship, not authorship. The works of living authors formed little or no part of the literature of the day. What rights, if any, they had in their work seemed not to have been discussed by them or anyone. Martin Luther in 1524 wrote: "There are many now busying themselves with the spoiling of books through misprinting them,"[4] and advocated laws which would give authors control of the printing of their books, but his object seems to have been the prevention of faulty printing and the preserving of the text from corruption. Literary piracy, however, was not unknown in Germany. Following the custom which prevailed with reference to manuscripts, where the right to copy was considered an incident to possession, possession of a copy of a printed book was believed to carry with it the right to print other copies, and this supposed right was frequently exercised unchallenged. The sale of spurious prints purporting to be the work of Albert Dürer was stopped by the magistrates of Nuremburg in 1512;[5] but this and the subsequent inhibition of the publication of a book on Proportion, which followed to some extent Dürer's treatise on the subject, but which was in no sense a piracy, judging it from modern standards, seem to have been isolated instances in which the local pride in a famous man and personal interest on the part of the magistrates secured a protection which probably would not otherwise have been accorded. Booksellers were protected by municipal regulations which forbade the printing of competing editions of the same books, the standard classics and the like. These ordinances, however, seem to have had no reference to literary prop-

[3] Unless the grant to Peter of Ravenna in 1491 of the exclusive right to print and sell his "Phoenix" can be so considered. Briggs, International Copyright, p. 29; Putnam, Books and Their Makers, 343; Brown, The Venetian Printing Press.

[4] Putnam, Books and Their Makers, 408.

[5] "Whereas, a certain foreigner, who sells engravings under the Council Chamber, has, among others, certain ones bearing the signature of Albrecht Dürer,

Now, therefore, it is ordered that he shall obliterate all such signatures and keep no more such engravings in future. And if he shall neglect so to do, he shall be brought before the council for fraud." *Thausing*, "Dürer," p. 254.

Dr. Jos. Kohler, "Das Recht des Markenschutzes," Wurzburg, 1884, p. 42.

erty, but were designed simply to restrain unprofitable competition. Protection in Germany during the fifteenth, sixteenth and seventeenth centuries was entirely a matter of local regulation or imperial license, for short terms and in the nature of commercial monopoly, not at all analogous to copyright as we now understand it.

In France books were licensed by the Theological Faculty of the University of Paris if they contained no heresy or treason and were not libelous, and sometimes exclusive licenses were granted, not only over certain books, but the subjects treated by them. During the period of the Reformation the entire printing of books was limited to certain men selected by the King; all books were to be approved; no new compositions whatsoever were to be licensed. People who violated this ordinance were hanged. These regulations were subsequently relaxed, but nothing that could be called copyright legislation was enacted until much later times.[6]

The consideration of copyright in England may well be introduced by the citation of the famous, if somewhat apocryphal, episode between Finnian and St. Columba.[7] The Saint, on a visit to Finnian, saw a psalter of great beauty which the Abbot owned, and decided to make a copy of it surreptitiously after his host was a-bed. He shut himself up at night in the church where the psalter was kept and began the piratical work with his right hand by the light which miraculously radiated from his left. This light shining from the church attracted a wayfarer, who investigated the keyhole, only to have his eye plucked out by a crane which happened to be roosting inside. He saw enough, however, to get a pretty good idea of what was going on within and, minus an eye, hurried to Finnian with the tale. The good Abbot was much enraged at what he regarded as a theft, and claimed from Columba the copy he had made, saying that it was as much his as the original. Columba refused to give up his ill-gotten property, and Finnian then instituted against him whatever was the early Irish equivalent of an action of replevin, and the cause came up for trial before King Dermott in Tara's Halls, who, after having heard the arguments of counsel and being fully advised, delivered judgment as follows: "To every cow her calf, to every book its copy."

Upon the introduction of printing into England it was assumed that all printing was the prerogative of the King, and certain persons were licensed to exercise the art by royal grants which were

[6] Much interesting matter on this subject is to be found in Mr. Putnam's book, "Books and Their Makers," Part III, p. 343, and following.

[7] Putnam, Books and Their Makers, p. 46; Kingsley's Lives of the Hermits; Birrell, Lectures on Copyright.

in the form of letters patent and frequently permitted the grantee to print certain specific books. These grants were precisely the same as the commercial monopolies which were usual in that period. Thus Wynkin de Worde was given the exclusive privilege of printing the "Mirroure of God for the Sinful Soul," just as another tradesman might be granted the exclusive privilege of making playing cards or selling salt.[8]

In order that the King might better control the art of printing, which it was seen might be a powerful factor in forming public opinion, the Company of Stationers was incorporated by Philip and Mary by royal decree in 1556, although it had existed for probably two centuries previously. Its members were given the monopoly of the business of printing books. This grant was on the theory that since the King had imported the first press from abroad, printing was a royal prerogative. Bibles, psalters and prayer books were the books most frequently printed, and it was ingeniously asserted that since the King paid for translating the Bible, the translation belonged to him; he was the head of the Church, therefore he owned the prayer book; he paid the legislators, hence the right to publish the laws was his; almanacs were but a form of church calendar and belonged to the King as the head of the church. These were called "prerogative copies." The true reason for their existence was that uniformity and order should be duly observed, and the subject informed with precision how to regulate his conduct[9] rather than that the King possessed any private property in them.

The notorious Jeffreys once figured in a case involving prerogative copies. Some persons had printed a psalter which they called "The King's Psalter," expecting to shelter themselves under the authority of so high a name from being called to account for their piracy in invading the rights of the Stationers Company. The Stationers sued and retained Jeffreys as their advocate. The King was present at the trial, and Sir George thought this an admirable opportunity to attract the notice of royalty, and in opening his case ventured upon a speech, which, his biographer says, "had almost ruined any other man." "They" (the literary pirates), said he, "have teemed with a spurious brat, which being clandestinely midwived into the world, the better to cover the imposture, they lay it at your Majesty's door." King James might well have

[8] There was a patent granted in 1530 to "Maistre Johan Colsgrove Anglays natyf de Londres et gradue de Paris" for a book to teach the French language which he is said to have "made with great and long continued dyligence." Briggs, International Copyright, p. 39; I. Herbert's Typographical Antiquities, p. 470.

[9] YATES, J., in Millar *v.* Taylor, 4 Burr. 2325.

been offended at so public a proclamation of his gallantries, but, turning to some of the lords who sat near him, he said: "This is a bold fellow, I'll warrant him." The Stationers won their case and Jeffreys was promoted to the bench.[10]

Whatever may have been the reason for "prerogative copies," whether money paid by the King for their production or reasons of state, the fact remained that the King had, in fact, the absolute power to control not only these, but all books. The printers and booksellers therefore quite naturally acquiesced in the King's claim of property and sought licenses to print them, and at the same time secured authority from the King to print other books to which he had no claim. These royal grants of privileges to print certain books were not copyrights; they were not granted to encourage learning or for the benefit of authors; they were simply commercial monopolies. They are frequently adduced in the attempt to show that copyright existed in England from the date of the introduction of printing, but they fail utterly to establish anything of the sort. They were not grants to an author protecting him in his own works; they were licenses to tradesmen to follow their calling. They were not property, but privilege. Not the grant of the right to print a new work as a reward, but arbitrary permission to print at all.

The Company of Stationers maintained a register[11] in which its

[10] Woolrych, Life of Jeffries, 40.

[11] The earliest record now in existence is that of 1554, and for many years it was thought that the register of copies between 1556 and 1571 was lost, but it was discovered that these entries were contained in the Warden's accounts. There is still a gap of five years, the first separate register of copies commencing 1576. From this date to the present day the registers are intact. Some of the entries are of great interest, for instance the following appears:

to

XXVI July (1602)

JAMES ROBERTES Entred for his cople under ye handes of Mr. Pasfeild & Mr. Waterson Warden a booke called ye Revenge of Hamlett Prince denmarke as yt was latelie acted by ye Lo: Chamberlyne his servantes. Vi d

1607

19 Novembris

Jo. SMYTHICK Entred for his copies under t handes of ye wardens these bookes followinge whiche dyd belonge to Nicholas Lynge

Viz.

6 a booke called Hamlett.....Vi d
9 Ye taminge of A Shrewe.....Vi d
10 Romeo and Julett.....Vi d
11 Loves Labour Lost.....Vi d

members entered the titles of the books which they were privileged to print, and when assignment was made the only record of the transfer was usually an entry in the registry book. A custom developed by which the members refrained from competition with each other by printing the books of which another was registered as proprietor. This was at first purely a matter of custom, but was afterward embodied in a by-law of the Stationers Company along with others, some of which are very curious; for instance, "That no two persons should speak at once," "that every member should speak with his hat off," "that a member should speak seriously." This respecting of "copy" was general among the trade; the by-law bound all printers, for the reason that no one could print books unless he was a member of the Stationers Company. Finally the granting of royal privileges came to an end and the registers of the Stationers Company superseded them. It would seem that the entries in the registry book of the Stationers Company were regarded as records of the rights of an individual in the thing named, and it was assumed that possession of a manuscript carried with it the right to print copies. The right to print the books which stood in the name of a member of the Company was called the "right of copy" or the "copy of a book," and was supposed to be based on the common law and to be perpetual. On July 11, 1637, the Court of Star Chamber assumed control of all printing, and a decree was promulgated in which it was stated that "divers libelous, seditious and mutinous books have been unduly printed

4 Augusti 1626

EDW. BREUSTER
ROB. BIRDE — Assigned over unto them by Mrs. Pavier and consent of full court of Assistantes all ye Estate right title and interest which Mr. Tho. Pavier her late husband had in ye copies hereafter mencioned viz. The historye of Hen. the fift and the play of the same Mr. Pavier's right in Shakesperes plaies or any of them
Sr John old Castle — a play
Tytus & Andronicus
Historye of Hamblett

14 die Septembris 1642

MR. FFLESHER — Assigned over unto him by virtue of a Note under the hand and seale — of ffrauncis Smethwick & subscribed by both the wardens all the — estate right title & Interest wch the said ffrauncis hath in these copies hereafter following — the wch did lately belong unto Mr. John Smethwick his father deceased.....
Hamlett; a play
The tameing of a shrew
Romeo & Juliett
Loves Labour Lost

Edw. Arber's Transcript of the Registers of the Company of Stationers in London; 1554-1640 A. D. Privately printed 1875-1894. Rivington, "A Short Account of the Worshipful Company of Stationers," pp. 33-34, where fac similes of these entries are given.

and other books and papers without license, to the disturbance of the peace of the Church and State, for the prevention whereof in time to come" it was ordered "that no seditious, scismatical or offensive books shall be printed, sold or disposed of," and further: "That no person or persons whatsoever shall at any time print or cause to be printed any Booke or Pamphlet whatsoever, unless the same Booke or Pamphlet, and also all and every the Titles, Preambles, Introductions, Tables, Dedications and other matters and things whatsoever thereunto annexed, or therewith imprinted, shall be first lawfully licensed and authorized only by such person and persons as are hereinafter expressed, and by no others, and shall be also first entered into the Register's Booke of the Company of Stationers; upon paine that every Printer appearing therein shall be forever hereafter disabled to use or to exercise the art of mysterie of Printing and to receive such further punishment, as by this Court or the high Commission Court respectively, as the several causes shall require, shall be thought fitting." This decree is a curious document and is a mirror of the times. It provided, among other things, that no "Haberdasher, Ironmonger, Chandler or other person not having been seven years a bookseller's or printer's apprentice shall receive, take or buy any Bibles, Testaments, Psalm Books, Primers, Almanacs or other books;" that no book in the English language shall be imported; that no premises be let for a printing-house without notice to the Stationers Company; that no carpenter or joiner shall make any printing press, and no smith forge any iron work for a printing-press, and no founder cast any letters without notice to the Stationers Company; that there shall be but twenty master printers, who are named; that all printers shall give bond not to print unlicensed books. The number of presses of each printer was limited, and the number of apprentices was limited.

It was likewise declared that "because a great deal of the secret printing in corners hath been caused for want of orderly employment for Journeymen printers," the Master and Wardens of the Company of Stationers were required to set to work Journeymen out of employment, and on the other hand if a Journeyman refused to go to work he was to be imprisoned. It was provided that anyone not authorized "presuming to set up any press for printing, work any press or set up any type, shall be set in the pillorie and whipt through the city of London." "That for the better discovery of printing in corners without license" the Stationers Company was given the right of search, "what houses and shops (and at what time they should think fit) and to seize all heretical, seditious or

unlicensed books." It will be seen what an iron-clad monopoly and what terrific power were possessed by the Stationers Company, and also how the Crown sought to control absolutely the printing press.[12]

The Licensing Acts of 1641, 1642 and 1643 were all along the same lines as the Star Chamber decree, and, while they were aimed at what they call "disorderly printing," imply the existence of a right of "copy" in books.[13]

The Act of June 14, 1643, after condemning "sundry private printing presses in corners" which print and disperse books in "such multitudes that no industry could be sufficient to discover or bring

[12] This decree is set out in full in Arber's edition of Milton's Areopagitica. The Court of Star Chamber was abolished in 1640 by 16 Ch. 1, C. 10.

[13] The Act of 1641, for instance, provided:

"It is ordered that the Master and Wardens of the Company of Stationers shall be required to take especial Order, that the Printers doe neither print, nor reprint anything without the name and consent of the Author: And that if any Printer shall notwithstanding print or reprint anything without the consent and name of the Author, that he shall then be proceeded against, as both Printer and Author thereof, and their names to be certified to this House."

The ordinance of 1643 was followed by those of 1647 and 1649, and these in turn by the Licensing Act of 1662, 13 & 14 C. II, C. 33 (8 Stat. at Large, Ed. 1763, p. 137). The Act of 1662 in connection with provisions for licensing books provided: III, (8) "Provided always that the said chancellors or vice-chancellors of either of the said Universities shall only license such books as are to be imprinted or reprinted within the limits of the said Universities respectively, but not in London or elsewhere, nor medling either with books of common laws, or matters of state or government, nor any book or books, the right of printing whereof doth solely and properly belong to any particular person or persons, without his or their consent first obtained in that behalf."

Sec. IV refers to right of copy by entry in the register book of the Stationers Company or of the Universities. Sec. VII (3) forbids the forging of "name, title, mark or vinnet of any other person who shall have lawful privileges * * * of printing the same, without the free consent of the person."

The provisions for search and seizure of unlicensed books follow closely the State Chamber decree of 1637.

The act continued in force for two years by its own provisions, and was farther continued by 16 Car. II, C. 8, and again for seven years from June, 1685, by I Jac. II, C. 17, and was again extended to 1694 (4 Wm. & M. C. 24), when it expired (4 Burr. 2317). Attempts were made for five years successively for a new licensing act. Such a bill once passed the House of Lords but the attempt miscarried, upon constitutional objections to a license. The booksellers applied to parliament in 1703, 1706 and 1709 for relief. Their petition in 1709 contained the following language:

"The liberty now set on foot of breaking through this ancient and reasonable usage is no way to be effectually restrained but by an act of parliament. For by common law a bookseller can recover no more costs than he can prove damage, but it is impossible for him to prove the tenth, nay perhaps the hundredth part of the damage he suffers, because a thousand counterfeit copies may be dispersed into as many different hands all over the kingdom, and he not be able to prove the sale of ten. Besides the defendant is always a pauper and so the plaintiff must lose his costs of suit. (No man of substance has been known to offend in this particular nor will any ever appear in it.) Therefore the only remedy by the common law is to confine a beggar to the rules of the King's Bench or the Fleet, and there he will continue the evil practice with impunity. We therefore pray that confiscation of counterfeit copies be one of the penalties to be inflicted on offenders."

to punishment all the several abounding delinquents," continues: "That divers of the Stationers Company and others being delinquents (contrary to former orders and the custom used among the said Company) have taken liberty to print, vend and publish the most profitable vendible copies of books belonging to the Company and other Stationers," and it was ordered that no book be printed unless licensed and "entered in the Register Books of the Company of Stationers according to ancient custom and the printer thereof to put his name thereto, and that no person or persons shall hereafter print, or cause to be reprinted, any Book or Books, or part of Book or Books heretofore allowed of and granted to the said Company of Stationers for their relief and maintenance of their poore, without the license or consent of the Master, Wardens and Assistants of the said Company, nor any Book or Books lawfully licensed and entered in the Register of the said Company for any particular member thereof, without the license and consent of the owner or owners thereof. Nor yet import any such Book or Books, or part of Book or Books formerly printed here, from beyond the Seas, upon paine of forfeiting the same to the Owner or Owners of the copies of the said Books, and such punishment as shall be thought fit."

And after authorizing searches for illicit presses, and all presses in the printing of scandalous and unlicensed books, "or any Copies of Books belonging to the said Company, or any member thereof, without their approbation and consents," and to seize and carry away such: "* * * presses and to search for scandalous and unlicensed books and pamphlets and all other books not entered, nor signed with the printer's name as aforesaid, being printed or reprinted by such as have no lawful interest in them."

Milton thundered against these decrees and orders in Areopagitica, excepting only the provisions here quoted. Concerning these he said, "For that part which preserves justly every mans Copy to himselfe, or provides for the poor, I touch not, only wish they be not made pretenses to abuse and persecute honest and painfull Men, who offend not in either of these particulars * * * and the just retaining of each man his severall copy, which God forbid should be gainsaid."[14]

These orders and decrees were all for the benefit of the booksellers and were all in the direction of strengthening the commercial monopoly in the art of printing, which the Stationers Company had so long enjoyed. There is nowhere any express recognition of the exclusive right of an author in his published works,

[14] Arber's edition Areopagitica, p. 34-79.

and whatever mention is made of authors is in connection with regulations requiring that each book should bear its author's or publisher's name to prevent the circulation of anonymous heresy, libel or sedition. The action was not for the encouragement of authorship, but quite the reverse.

Upon the facts thus briefly set out are based the arguments which were afterwards so ardently advanced in support of the assertion that perpetual copyright in published works existed at common law, as a historical fact. The most that can be said is that the booksellers supposed themselves entitled to a perpetual right of copy, or at least asserted it, and that some of the decrees and licensing acts inferentially assume that a right of some sort existed.

There seems to have been no end to the philosophic disputations over the right of an author to his work after publication. The literary and legal world was divided into two parties on the subject. One, the "author's men," maintained that the exclusive right to make copies existed after publication in perpetuity. The other faction asserted that this exclusive right was lost by publication, that publication was an abandonment and that the purchaser of a book could use it as he chose and make other copies if he would. The "author's men" argued, no doubt, the purchaser of a book owns all that is tangible about it, he has paid for it and owns the paper and the binding, and that he has a right to all the instruction and amusement he can get out of it. If from reading a book of sonnets he learn to write a sonnet, very well, but how can the mere possession of the book give him the right to multiply copies of it? The purchaser of a theatre ticket has the right to witness the play and derive as much enjoyment and profit as he can from it, but he has no right to print other tickets. If I lend a friend my key he certainly should not be permitted to make other keys and distribute them broadcast and let the whole world into my house. The only way I may profit by my work is by publishing and selling it, how can it be that when I avail myself of my only means of profiting by my property by that very act my property ceases to be mine, but I must share it with all mankind? To this the opponents of the common law theory answered—we concede that as long as you retain control over your work it is yours, but by publishing it you lose control of it; it no longer belongs exclusively to you, but is the common property of all. You have parted with your exclusive right when your work is published to the world without reservation. The same rule applies here as applies with respect to all other forms of property. Throw your purse in the highway and it belongs to the first wayfarer who picks it up. Confine a bird in a

cage and it is yours, but open the door, the bird flies and is yours no longer. These things like in publication of a literary work are an abandonment of exclusive property, a dedication to the public.[15] And so the controversy went merrily on. It seems strange that the final settlement of the matter did not come until so late a date as 1854,[16] but, as Mr. Birrell[17] has said, this is probably due to the fact that "after his first publication the British author usually disappeared, and if he reappeared it was in the pillory"—and it may well be that he was more exercised in getting out of the pillory than in protecting the work that got him there.

EDWARD S. ROGERS.

CHICAGO.

[15] See the arguments of Blackstone, Wedderburn, Thurlow and Yates in Tonson *v.* Collins, 1 W. Bl. 300.

Dr. Johnson expressed himself upon the subject with his usual force. Boswell says: "He was loud, and violent against Mr. Donaldson. 'He is a fellow who takes advantage of the law to injure his brethern; for notwithstanding that the statute secures only fourteen years of exclusive right, it has always been understood by the trade, that he who buys the copyright of a book from the author, obtains the perpetual property; and upon that belief, numberless bargains are made to transfer that property after the expiration of the statutory term. Now Donaldson, I say, takes advantage here, of people who have really an equitable title from usage; and if we consider how few of the books, of which they buy the property, succeed so well as to bring profit, we should be of opinion that the term of fourteen years is too short; it should be sixty years.' DEMPSTER: 'Donaldson, Sir, is anxious for the encouragement of literature. He reduces the price of books, so that poor students may buy them.' JOHNSON (laughing): 'Well, Sir, allowing that to be his motive, he is no better than Robin Hood, who robbed the rich in order to give to the poor.' " Temple Ed., Boswell's Johnson, Vol. II, p. 120.

[16] Millar *v.* Taylor, 1769, 4 Burr. 2303, held, Lord MANSFIELD, ASTON and WILLES, JJ., YATES, J., dissenting, that perpetual copyright existed at common law, that the right continued after publication and was not taken away or limited by Statute 8 Anne, C. 19.

Donaldson *v.* Becket (1774), 4 Burr. 2408, 17 Cobbett, Parliamentary History, 954, 971, 991, 1002, held that perpetual copyright after publication existed at common law but was extinguished by the statute of 8 Anne, C. 19, and that thereafter the author was precluded from every remedy not founded on the statute. The law of England remained in this condition until 1854, when it was held by the House of Lords in Jeffreys *v.* Boosey, 4 H. L. Cases, 461, that there never had been such a thing as a common law copyright after publication. The Supreme Court of the United States came to the same conclusion in Wheaton *v.* Peters (1834), 8 Pet. 591.

[17] Augustine, Birrell Lectures on the Law of Copyright.